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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/748,675	12/31/2003	Randall J. Macbeth	MFCP.110230	2766
45809 7590 06/12/2007 SHOOK, HARDY & BACON L.L.P. (c/o MICROSOFT CORPORATION) INTELLECTUAL PROPERTY DEPARTMENT 2555 GRAND BOULEVARD KANSAS CITY, MO 64108-2613			EXAMINER MADAMBA, GLENFORD J	
			ART UNIT 2151	PAPER NUMBER
			MAIL DATE 06/12/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/748,675	Applicant(s) MACBETH ET AL.	
	Examiner Glenford Madamba	Art Unit 2151	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 31 December 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 12/31/2003 is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1-36 are rejected under 35 U.S.C. 102(e) as being anticipated by Yang et al, (hereinafter Yang), U.S. Patent Publication US 2002/0169889.

As per Claims 1, 13, and 25, Yang discloses a system for monitoring a networked computer service for fault recovery, comprising:

an input interface (e.g., client 110) to receive network status data from a network monitor monitoring a computer services network (e.g. site 150) [Fig. 1];

a control engine (e.g., Dispatcher 130), the control engine communicating with the input interface to receive the network status data and automatically generate control

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commands based on a fault condition (e.g., server overload or failure) [0010-0014] in the network status data [Fig. 1]; and

an output interface (e.g. routing mechanism 135), communicating with the control engine and the computer services network (site 150), the output interface communicating the control commands (e.g., request migration and/or recovery) to the computer services network to respond to the fault condition [Fig. 1] [0008] [0010-0014] [0020] [0025] [0034] [also Claim 1, pg. 6].

Claims 13 and 25 recite the same limitations as claim 1, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 2, 14, and 26, Yang discloses a system according to claim 1, wherein the computer services network comprises an Internet service (Internet 120 / web service) [0001-0002].

Claims 14 and 26 recite the same limitations as claim 2, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 3, 15, and 27, Yang discloses a system according to claim 2, wherein the Internet service comprises a search service (e.g., request for "Best site of the Month , e-commerce services, etc.) [0009].

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Claims 15 and 27 recite the same limitations as claim 3, are distinguished only by their statutory category, and thus rejected on the same basis.

As per Claims 4, 16, and 28, Yang discloses a system according to claim 1, wherein the network status data comprises at least one of page latency data, processor utilization data, connection data and storage data (e.g., sluggish client response, server overload) [0004].

Claims 16 and 28 recite the same limitations as claim 4 are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 7, 19, and 31, Yang discloses a system according to claim 1, wherein the control commands comprise a command to deactivate or reduce an affected service in the networked computer services (disabling of servers) [0066].

Claims 19 and 31 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 8, 20, and 32, Yang discloses a system according to claim 7, wherein the control engine reactivates or restores the affected service upon restoration of predetermined network status data (e.g., regeneration after server failure...) [0063] (system stabilized and return to 'normalcy') [0066].

Claims 20 and 32 recite the same limitations as claim 8, are distinguished only by their statutory category, and thus rejected on the same basis

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As per Claims 9, 21, and 33, Yang discloses a system according to claim 7, wherein the control engine alters the operation of another service in compensation for the affected service [0024-0025].

Claims 21 and 33 recite the same limitations as claim 9, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 10, 22, and 34, Yang discloses a system according to claim 1, wherein the control engine comprises a rules-based decisioning engine (e.g., categorizing web requests as either, static, dynamic, or session with corresponding solution of migration and recovery) [0035].

Claims 22 and 34 recite the same limitations as claim 10, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 11, 23, and 35, Yang discloses a system according to claim 10, wherein the rules-based decisioning engine interfaces to a control database (e.g., storing of TCP states) [0029] (e.g. URL table) [0031-0032] storing at least one of the network status data and a set of service fault rules (server overload or failure).

Claims 23 and 35 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 12, 24, and 36, Yang discloses a system a system according to claim 1, further comprising a manual override selector, the manual override selector permitting an operator to override the control commands generated by the control engine (e.g., intentionally disabling servers) [0066].

Claims 24 and 36 recite the same limitations as claim 7, are distinguished only by their statutory category, and thus rejected on the same basis

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 5, 6, 17, 18, 29 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang, U.S. Patent US 6,444,840 in view of DeBettencourt et al (hereinafter DeBettencourt), U.S. Patent Publication US 2002/0042823 A1.

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As per Claims 5, 17, and 29, Yang in view of DeBettencourt discloses a system according to claim 1, wherein the fault condition comprises a failure of the network status data to meet a performance threshold [DeBettencourt: Abstract].

While Yang discloses substantial features of the invention such as the system of claim 1, and in particular a system for monitoring a networked computer service for fault recovery, he does not explicitly disclose the added feature of the system wherein the fault condition comprises a failure of the network status data to meet a performance threshold. The feature is disclosed by DeBettencourt in a related endeavor.

DeBettencourt discloses as his invention a web service system that allows a system operator to manage multiple web servers [0001]. In particular, DeBettencourt discloses the additional feature of the system wherein the fault condition comprises a failure of the network status data to meet a *performance threshold* (e.g., error and/or component failure thresholds) [Abstract].

It would thus be obvious to one of ordinary skill in the art at the time of the invention to combine and/or modify Yang's invention with the added feature of the system wherein the fault condition comprises a failure of the network status data to meet a *performance threshold*, as disclosed by DeBettencourt, for the motivation of providing management capability in automatic error recovery and recovery from component failures or network environmental problems [Abstract] [0002] [0010].

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Claims 17 and 29 recite the same limitations as claim 5, are distinguished only by their statutory category, and thus rejected on the same basis

As per Claims 6, 18, and 30, Yang (in view of DeBettentcourt) discloses a system according to claim 5, wherein the performance threshold comprises a minimum response time for a user of the networked computer services (e.g., client response time) [0004].

Claims 18 and 30 recite the same limitations as claim 6, are distinguished only by their statutory category, and thus rejected on the same basis.

Conclusion

1. The Examiner has cited particular columns and line numbers in the references applied to the claims above for the convenience of the applicant. Although the specified citations are representative of the teachings of the art and are applied to specific limitations within the individual claim, other passages and figures may apply as well. It is respectfully requested from the applicant in preparing responses, to fully consider the references in entirety as potentially teaching all or part of the claimed invention, as well as the context of the passage as taught by the prior art or disclosed by the Examiner.

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2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure:

- Coughlin

Patent Pub No.: US 2003/0204769 A1

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Glenford Madamba whose telephone number is 571-272-7989. The examiner can normally be reached on M-F 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Zarni Maung can be reached on 571-272-3932. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


ZARNI MAUNG
SUPERVISORY PATENT EXAMINER

Glenford Madamba
Examiner
Art Unit 2151